

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

A.P.,

Petitioner,

v.

THE SUPERIOR COURT OF SANTA  
CLARA COUNTY,

Respondent;

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Real Party in Interest.

H042379

(Santa Clara County  
Super. Ct. No. 1-13-JD022083)

**I. INTRODUCTION**

A.P., the mother of the child at issue in this juvenile dependency matter, has filed a petition for extraordinary writ challenging the juvenile court's order terminating her reunification services at the 12-month status review hearing and setting the matter for a Welfare and Institutions Code section 366.26 permanency planning hearing.<sup>1</sup>

---

<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

For the reasons stated below, we find that substantial evidence supports the juvenile court's findings that returning the child to the mother's care "would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being" of the child. (§ 366.21, subd. (f).) We will therefore deny the writ petition.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### ***A. Section 300 Petition, Initial Hearing Report, and Detention Hearing***

On September 10, 2013, the Santa Clara County Department of Family and Children's Services (the Department) filed a petition under section 300, subdivision (b) [failure to protect] alleging that the three-week-old child came within the jurisdiction of the juvenile court. The petition alleged that the father, J.P., was in state prison at the time.

The petition alleged that on September 6, 2013, the police had taken the child into protective custody. The mother had been publicly intoxicated, and she had been arrested for child endangerment. The mother had admitted drinking two 24-ounce beers, and a preliminary alcohol screening test showed that her blood alcohol content was 0.143 percent. The child's diaper was soiled, and the child had a diaper rash.

The Department filed an initial hearing report on September 11, 2013. The mother had acknowledged placing the child into a dangerous situation. The mother had been released from jail with conditions that she drug test, attend substance abuse treatment, and attend parenting classes. The mother told the social worker that she was taking parenting classes through her transitional housing program.

A mandated reporter had made a prior referral for the child two days after her birth. The reporter had concerns about the mother's mental health and cognitive delays. The child had a heart condition, and the mother had difficulty following instructions about how to care for the child. The mother had also gotten angry with nurses who had tended to the child in the hospital.

A detention hearing was held on September 11, 2013. The juvenile court found that the Department had made a prima facie showing that the child came within section 300 and that continuing the children in the home of the parent was contrary to the child's welfare. The court ordered supervised visitation for the mother at least two times per week.

***B. First Amended Petition***

A first amended section 300 petition, filed on September 27, 2013, added further allegations about the father's criminal history, which included convictions for battery, possession of a switchblade, sexual intercourse with a minor, battery on a former spouse or fiancée, violation of a domestic violence restraining order, possession for sale of marijuana, robbery, and burglary.

The first amended petition also added allegations about the mother. The mother had a five-year history of substance abuse that included marijuana and methamphetamine. The mother had used marijuana while pregnant and had attempted to use marijuana in the child's presence. The mother also had "borderline cognitive abilities."

***C. Jurisdiction/Disposition Reports and Hearing***

The Department filed a jurisdiction/disposition report dated September 30, 2013, recommending that the juvenile court sustain the petition and return the child to the mother on family maintenance services. The mother was living in transitional housing provided by the Bill Wilson Center, where she had "a lot of support," including a case manager, a house monitor, a counselor, and a parenting instructor.

The mother told a social worker that she "was a 'pothead,' not an alcoholic," and that she did not use drugs other than marijuana. She admitted using methamphetamine in the past, and she admitted using marijuana to help her nausea during the first four or five months of her pregnancy, as well as after the child's birth. The mother had also told staff at the Bill Wilson Center that she believed the child had been taken away from her

because “she had empty cans of beer on her,” and that she did not “see what is wrong with drinking” since she was over 21 years old.

The mother had tested negative for all substances on September 18, 2013, and she had attended seven Alcohol Anonymous (AA) meetings between September 13, 2013 and September 22, 2013. The mother was scheduled to begin a 12-week course on parenting infants. Since the detention hearing, the mother had regularly visited with the child, taking all opportunities to hold, feed, burp, and change the child.

A psychological evaluation of the mother in 2009 indicated that the mother had “borderline cognitive ability.” The mother had been described as impulsive and distractible, reactive when frustrated, and lacking insight into her behavior.

The child had been born with meconium aspiration syndrome, and she had been kept in the hospital for 10 days after her birth. The child also had initially been diagnosed with two small pinholes in her heart, but those had closed. She appeared developmentally on target, and follow-up care was being provided by Santa Clara Valley Medical Center.

In an addendum report dated October 23, 2013, the Department reported that the mother continued to comply with her random drug testing requirement and that all of her tests had been negative. The mother had been attending AA meetings and parenting classes. The mother had begun having unsupervised visits with the child, including one overnight visit, and there were no reported safety concerns.

On October 23, 2013, the mother and the father both submitted on the Department’s jurisdiction/disposition report. The juvenile court sustained the petition and adopted the Department’s recommendations, ordering the child returned to the mother on family maintenance services. The mother was ordered to participate in and successfully complete parent orientation, a parenting class, a counseling program, a psychological evaluation, random drug testing, a 12-step or other substance abuse program, and a substance abuse assessment.

#### ***D. Interim Review***

The Department filed an interim review report dated January 15, 2014. The mother had been participating in AA/NA meetings and was going to begin participating in a one-on-one drug and alcohol program. She had completed parent orientation and a parenting class. The child appeared to be doing well, and the mother had been taking the child to all of her medical appointments.

However, on December 11, 2013, the mother had drunk vodka with a friend, and she had returned to the Bill Wilson Center under the influence of alcohol. The mother also reported that she had two criminal charges pending against her.

The mother had undergone a psychological evaluation, which showed that her IQ fell “within the borderline range,” indicating she had “delayed intellectual, emotional, and/or adaptive functioning.” The evaluator believed that the mother should continue taking parenting classes and continue to be drug tested randomly. The evaluator further believed that the mother would benefit from mental health treatment.

#### ***E. Supplemental Petition, Reports, and Hearing***

The Department filed a section 387 petition on February 25, 2014, alleging that the mother had shoplifted on two occasions and had told the police that she could no longer care for the child. On February 14, 2014, the mother had concealed \$140 worth of items in the child’s diaper bag. On February 23, 2014, the mother had concealed items in the child’s stroller. The mother had told the police that she was “going crazy,” that she had not taken her medication, that her mind was “blank,” and that the child was “better off with CPS [Child Protective Services].”

On February 26, 2014, the juvenile court ordered the child detained, and it ordered supervised visitation for the mother at least two times per week.

The Department prepared a report regarding the supplemental petition dated March 19, 2014. In addition to describing the shoplifting incidents and the vodka incident, the report described how the mother had been sending money to the father and

how she wanted to move to Southern California in order to be closer to the prison where the father was housed.

The mother had been prescribed Zoloft by a psychiatrist. She had been attending the one-on-one drug and alcohol counseling program. She had missed one drug test and had two “abnormal” drug tests. She had completed a parenting assessment, in which she had been found to need “continuous support.” However, the mother had stated, “I can take care of myself” and “I don’t need nobody.” She did not believe she had endangered the child.

The Department recommended that the child be removed from the mother’s care but that the mother receive reunification services. On March 24, 2014, the mother and father both submitted on the Department’s reports. The juvenile court found the allegations of the supplemental petition true and adopted the Department’s recommendations.

***F. Second Interim Review***

The Department filed an interim review report dated May 8, 2014. The mother was in residential treatment, where she was making good progress. Previously, she had been drinking and had been found inappropriate for outpatient treatment.

The mother had been visiting with the child. The child was doing well but was not in a concurrent placement. Concerns about the child’s development included her failure to make eye contact, her failure to respond to playful interactions, and the fact that she cried easily and was difficult to soothe. The child had been diagnosed with a chromosomal disorder and had been referred for a developmental screening as well as to the Early Start program.

At a hearing held on May 8, 2014, the juvenile court adopted the Department’s recommendations, continuing the prior orders. On June 30, 2014, the child was placed in a concurrent home.

***G. Six-Month Status Review Report and Hearing***

The Department filed a six-month status review report dated October 22, 2014, recommending the mother continue to receive reunification services.

The mother was no longer in residential treatment. She had been referred to a transitional housing unit program, but she was discharged from the program for possessing marijuana and Spice.<sup>2</sup> The mother had been convicted of willful harm or injury to a child (Pen. Code, § 273a, subd. (b)) and placed on probation with a criminal protective order that allowed her to have peaceful contact with the child. The mother had been ordered to complete a 52-week child abuse program as a condition of her probation.<sup>3</sup>

The mother had also been referred to outpatient drug and alcohol services, but she was initially found ineligible for those services due to her behavioral issues. She was then evaluated for mental health services, and she was found to meet the criteria for mood disorder, posttraumatic stress disorder, borderline personality disorder, and cannabis dependence, with possible bipolar disorder. The mother had been prescribed psychotropic medications but was not taking them. The mother was later found eligible for outpatient services on the condition that she demonstrated compliance with her mental health treatment program.

At the six-month review hearing, held on October 22, 2014, the juvenile court adopted the Department's recommendations, ordering reunification services for the mother, which included supervised visitation at least once a week.

---

<sup>2</sup> The social worker later described Spice as synthetic marijuana and explained that it does not show up on drug tests.

<sup>3</sup> On September 10, 2014, the Department filed a request to change the court orders, noting that the mother needed financial assistance for the child abuse program and requesting the juvenile court order her to complete the same program. The mother subsequently received "special funding" for the program from the Department.

## ***H. Third Interim Review***

The Department filed an interim review report dated January 28, 2015. The mother had moved into an apartment. She had started a job but was released on the first day. She had attended the child abuse program classes, AA meetings, and outpatient treatment services, including substance abuse and individual counseling. The mother claimed to have been sober since late October of 2014. Some of the mother's drug test results had been "dilute," and others had been normal. The mother reported that she had been caught shoplifting.

## ***I. 12-Month Review Reports***

The Department filed a 12-month review report dated April 21, 2015, in which it recommended termination of the mother's reunification services.

The child still appeared to be developmentally delayed in the areas of gross motor skills, fine motor skills, receptive communication skills, expressive communication skills, cognitive skills, and self-concept and social role skills. She was receiving services and doing well in her concurrent placement.

The mother had attended the child abuse program but was reported to not be benefitting from the program. The mother had "little insight" into the issues that had led to the dependency proceedings. The mother did not believe that the child was developmentally delayed. The mother had been visiting the child, but she needed close supervision during the visits and needed to be "coached."

The mother had been attending therapy and appeared to have been medication compliant as well as more clinically stable. The mother had been compliant with drug testing, but she had a number of "abnormal results"—primarily "dilute" tests.<sup>4</sup> In April

---

<sup>4</sup> The mother had one test that was positive for alcohol in March of 2015, but the social worker later stated that the test result was not valid.



of 2015, the mother had told her probation officer that she “smoked Spice, because it doesn’t show up in the system.”

The social worker was concerned that if the child was returned to the mother’s care, the mother would not provide for the child’s developmental needs. The social worker was also concerned about the mother’s ongoing substance abuse (i.e., her use of Spice), her failure to progress in the child abuse program, and her need for close supervision during visits with the child.

In an addendum report dated May 20, 2015, the Department provided an update about the child’s medical condition. The child had been hospitalized on April 28, 2015, and she had been diagnosed with Hemolytic Uremic Syndrome. Her kidneys were failing and she needed dialysis. The child remained in “critical state” in the neonatal intensive care unit (NICU) on May 6, 2015.

***J. 12-Month Review Hearing***

The 12-month review hearing was held on May 20, 2015. The juvenile court granted the caregivers’ request for de facto parent status. The social worker, the mother, and the mother’s sponsor all testified at the hearing.

The social worker was deemed an expert in risk assessment for dependent children. She testified that the child remained in the hospital but had been moved from the NICU to the acute unit. The child would be a medically “high-risk” child and would need special medical care when released, likely including a feeding tube and dialysis. The child also had developmental issues and needed a caregiver who could help her obtain and utilize services.

The social worker did not believe the mother could safely care for the child. The mother had a difficult time even understanding why she needed to sign releases for the child’s services. The mother’s comments indicated she did not believe the child had any developmental problems. The mother had a history of making impulsive decisions and had admitted using Spice. The mother had not progressed beyond supervised visits

because of her “unpredictable behavior during the visits”—i.e., her refusal to take direction from the person supervising the visits.

The mother submitted a progress report from the child abuse program that indicated she was making better progress. She had attended 30 sessions and testified that she was learning “how to be a better parent.” She was regularly attending therapy and learning “how to be peaceful.” She was staying sober and working with her sponsor in the NA/AA program. She was taking her medication. She acknowledged having smoked Spice “like, in last month,” but she stated she did not do so any longer.

The mother admitted that sometimes during visits, she would just sit and look at the child instead of playing with her. The mother expressed her belief that the child did not have any developmental problems before she was put “in the system.” She was unaware of what services the child was being provided for her developmental delays. The mother was confident she would be able to take care of the child’s current medical condition.

The mother’s sponsor testified that she met with the mother once a week. She believed the mother understood how alcohol had been affecting her life and that she needed to be sober in order to provide the child “with the love she feels for her.” The sponsor acknowledged that the mother had used Spice within about a month of the hearing.

At the end of the hearing, the Department reiterated its request that the juvenile court terminate reunification services and set a permanency planning hearing. Counsel for the child agreed with the Department’s recommendations. Counsel for the mother argued that there had been recent change in the mother’s circumstances and that the juvenile court should find a probability that the child could be returned to the mother’s care after another six months of services. The juvenile court took the matter under submission.

***K. Addendum Report***

The Department filed an addendum report dated May 27, 2015. The child remained in the hospital. She had a feeding tube, and she required four shots of insulin daily as well as a shot of a medication for her kidney disease. She was no longer receiving dialysis and was going to be released from the hospital soon.

***L. Juvenile Court Findings and Writ Proceedings***

The juvenile court announced its findings on May 27, 2015. The court found that returning the child to the mother's physical custody "would create a substantial risk of detriment to the child's safety, protection, physical and emotional needs." As the basis for that finding, the court cited the mother's "inability to stay clean and sober for any extended period of time, and her lack of insight into [the child's] medical and developmental needs." The juvenile court terminated reunification services and set a permanency planning hearing for September 23, 2015.

Through counsel, the mother filed a notice of intent to file a writ petition on June 2, 2015. On July 13, 2015, the mother filed a petition for extraordinary writ, in propria persona.

**III. DISCUSSION**

***A. Adequacy of the Writ Petition***

The Department contends we should deny the mother's writ petition, asserting that the petition "does not comply with briefing requirements and does not identify any error or present supporting argument for [the mother's] position."

A writ petition seeking review of a juvenile court's order setting a hearing under section 366.26 must include a summary of the grounds of the petition. (Cal. Rules of Court, Rule 8.452(a)(1)(D).<sup>5</sup>) The petition "must be accompanied by a memorandum." (Rule 8.452(a)(2).) "The memorandum must provide a summary of the significant facts,

---

<sup>5</sup> All further rule references are to the California Rules of Court.

limited to matters in the record.” (Rule 8.452(b)(1).) “The memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority.” (Rule 8.452(b)(2).) “The memorandum must support any reference to a matter in the record by a citation to the record. The memorandum should explain the significance of any cited portion of the record and note any disputed aspects of the record.” (Rule 8.452(b)(3).) Where a writ petition is procedurally deficient, a reviewing court may summarily deny it. (See *Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 157.) However, a writ petition “must be liberally construed” by the appellate court. (Rule 8.452(a)(1).)

In her petition for an extraordinary writ, the mother indicates she is challenging the juvenile court’s order terminating her reunification services. The mother’s petition specifies why she believes that the order setting a section 366.26 hearing was erroneous: “I don’t agree with the reasons why the court used to decide to terminate reunification services.” The mother has also included a separate page explaining the basis for her disagreement with the juvenile court’s findings. Regarding the juvenile court’s finding that she lacked the ability to stay clean and sober, the mother states, “I have been consistently attending AA classes and receiving support from sponsors and case managers to stay sober. I am proud to share that I’ve been clean since a slip up four months ago and I am determined not to use again!” The mother also asserts that she has “the skills and smarts to be able to care for” herself and the child and that she will be able to care for the child’s complex medical needs as long as she receives proper training.<sup>6</sup>

Construed liberally, the writ petition is not so procedurally deficient as to require us to summarily deny it. We construe the separate page of the writ petition as the required memorandum, and the mother’s arguments are easily discernible: she claims

---

<sup>6</sup> The writ petition also includes a letter from the mother’s friend and a letter concerning her housing. We have not considered these letters, which are not part of the appellate record. (See Rule 8.452(b)(1).)

the evidence does not support the juvenile court's finding that returning the child to the mother's physical custody "would create a substantial risk of detriment to the child's safety, protection, physical and emotional needs" because she has the ability to stay clean and sober and the ability to care for the child's special needs. Thus, we will proceed to examine whether the record supports that finding. We shall also examine whether the record supports the juvenile court's denial of the mother's request to extend services for another six months.

***B. Legal Principles***

After a child is removed from a parent's custody, the juvenile court generally must order reunification services for the child and the parents. (§ 361.5, subd. (a).) When the child is under three years of age at the time of removal, reunification services must be provided for six months "but no longer than 12 months." (*Id.*, subd. (a)(1)(B).) Reunification services may be extended up to 18 months from the date of removal if the juvenile court finds a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within that extended time period or that reasonable services have not been provided to the parent or guardian. (*Id.*, subd. (a)(3).)

At all status review hearings, the court must consider the safety of the child (§ 366, subd. (a)(1)), the Department's efforts (*id.*, subd. (a)(1)(B)), and the "extent of progress" that the parents have made "toward alleviating or mitigating the causes necessitating placement in foster care" (*id.*, subd. (a)(1)(E)). At the 12-month review hearing, "the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child." (§ 366.21, subd. (f).)

"The standard for showing detriment is 'a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification

services as much as we might have hoped, or seems less than capable than an available foster parent or other family member.’ [Citation.]” (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 (*Yvonne W.*)) “Rather, the risk of detriment must be *substantial*, such that returning a child to parental custody represents some danger to the child’s physical or emotional well-being. [Citations.]” (*Ibid.*) When the juvenile court considers whether to deprive a parent of custody, it is concerned about the parent’s “grasp of the important parenting concepts—things such as a child’s need for security, adequate nutrition and shelter, freedom from violence, proper sanitation, healthcare, and education.” (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790.) Thus, the court must consider whether the parent corrected the problem that required court intervention and the effect such return would have on the child. (*In re Joseph B.* (1996) 42 Cal.App.4th 890, 901.)

An appellate court reviews the juvenile court’s finding that returning a child to the parent’s custody would be detrimental under the substantial evidence test. (*Yvonne W.*, *supra*, 165 Cal.App.4th at p. 1401.) In reviewing the record for substantial evidence, “we consider the evidence favorably to the prevailing party and resolve all conflicts in support of the trial court’s order. [Citation.]” (*Ibid.*)

### ***C. Analysis***

In this case, the mother received reunification services for more than 12 months after the child was removed from her due to her use of alcohol and marijuana while caring for the child. The mother was required to complete parenting education programs, counseling, and substance abuse programs. While the mother complied with the case plan to some extent, by participating in the required programs, this is insufficient to compel reversal of the juvenile court’s ruling. (See *In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1143.) Her case plan progress was not substantial in “qualitative” terms. (See *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1748.) Although the mother had participated in a number of programs to address her substance abuse as

well as parenting classes, the mother had used alcohol and drugs at various times during the proceedings. The mother had some clean drug tests, but she also had “abnormal” and “dilute” tests. She had used one drug, Spice, as recently as a month or so before the 12-month review hearing.

The facts here contrast with those in *Yvonne W.*, *supra*, 165 Cal.App.4th 1394, where “[t]he uncontroverted evidence” showed that the mother had “*completed* her case plan.” (*Id.* at p. 1401, italics added.) In that case, the child had been removed due to the mother’s drug use, and the mother had engaged in extensive reunification services within the first six months after the removal. (*Id.* at p. 1397.) The mother was “committed to her sobriety,” appeared to have benefitted from the reunification services, and had made changes that were “in her children’s best interests.” (*Id.* at p. 1401.) She was safely parenting another child. She had done “everything Agency asked of her, including eliminating the conditions that led to [the child’s] out-of-home placement.” (*Ibid.*) Thus, substantial evidence did not support a finding of detriment under section 366.22. (*Id.* at pp. 1400-1402.)

In this case, the juvenile court cited the mother’s “inability to stay clean and sober for any extended period of time, and her lack of insight into [the child’s] medical and developmental needs” as the basis for its detriment finding. On this record, the juvenile court could reasonably determine that, while the mother had made some progress during the reunification period and clearly loved the child, she was not yet ready to care for her young child, who had serious medical and developmental problems. Not only did the mother fail to demonstrate that she had overcome her drug and alcohol problems, but she did not demonstrate that she had the ability to parent a special needs child. For instance, the mother did not demonstrate any initiative to be involved with the child’s treatment despite being informed of her developmental delays, and she downplayed the serious problems that the child was having. The mother had not progressed from supervised visits with the child, during which she needed to be coached. The mother had refused to

comply with her own medication regimen at times, resulting in unpredictable behavior. On this record, the juvenile court could reasonably conclude that the mother was still unable to adequately provide for the child's health and safety, such that there was a substantial risk of detriment if the child was returned to her care. (See § 366.21, subd. (f).)

There was also no basis for the juvenile court to extend reunification services to 18 months. (§§ 361.5, subd. (a)(3), 366.21, subd. (g).) By the time of the 12-month hearing in May of 2015, more than 18 months had passed since the child was originally removed from the mother's custody in September of 2013. Although only 15 months had passed since the supplemental petition was filed, this did not extend the time limit for reunification services. (See *In re Steven A.* (1993) 15 Cal.App.4th 754, 765 ["A brief return to parental custody does not interrupt the running of this period. . . . Nor is there a return to 'square one' when a supplemental petition pursuant to section 387 is filed and sustained. . . ."].)

Having reviewed the entire record, we determine that substantial evidence supports the juvenile court's findings.

#### **IV. DISPOSITION**

The petition for extraordinary writ is denied.



---

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

---

MIHARA, J.

---

GROVER, J.